

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WEYERHAEUSER COMPANY)
(Longview Wood Products)
Division))
Appellant,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 735

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, an appeal from the refusal of respondent to issue an "Order of Approval" permitting the appellant to construct, install, and establish an air contaminant source at its planer mill, was held before the Pollution Control Hearings Board, W. A. Gissberg (presiding), Chris Smith and Walt Woodward at a formal hearing on February 27 and 28, 1975 in Lacey, Washington.

Appellant was represented by its attorney, Stuart A. Heller; respondent was represented by its attorney, James D. Ladley. Olympia

1 court reporter, Eugene E. Barker, recorded the proceedings.

2 The parties submitted stipulations of fact. Witnesses were sworn
3 and exhibits admitted. The testimony of two witnesses (Mr. Arthur
4 Dammkoehler, executive officer of the Puget Sound Air Pollution Control
5 Agency, and Mr. John Rosene, executive officer of the Olympic Air
6 Pollution Control Authority) was heard and admitted through their sworn
7 depositions. Mr. Edward Taylor, respondent's executive officer, appeared
8 in person, as a witness, though part of his testimony was heard and
9 admitted through his sworn deposition. Counsel made arguments.

10 Having heard the testimony, having examined the exhibits, having
11 considered the contentions of the parties and briefs in support thereof,
12 and the Board having received exceptions to its proposed Order and
13 replies thereto, and having considered said exceptions and having granted
14 same in part and having denied same in part, and having fully satisfied
15 itself in all respects; now therefore, the Pollution Control Hearings
16 Board makes the following:

17 FINDINGS OF FACT

18 I.

19 The appellant, Weyerhaeuser Company, owns and operates a planer mill
20 in Longview, Washington. In April, 1974, appellant submitted an
21 "Application for Approval to Construct, Install, Establish or Alter an
22 Air Contaminant Source Facility" to the respondent, Southwest Air
23 Pollution Control Authority (SWAPCA). After considering the application,
24 an "Order for Prevention" was entered which prohibited construction of the
25 proposed contaminant source. SWAPCA's Board considered this Order and
26 subsequently affirmed the disposition. Appellant thereafter appealed
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1 respondent's decision to this Board.

2 II.

3 Appellant proposes to modernize its planing mill by making
4 substantial revisions to one existing line and wholly replacing two other
5 lines of lumber planing and trimming equipment. The replacement planing
6 and trimming equipment will have the same purpose, and essentially the
7 same design and operation as the original equipment.

8 Included in the above plans, as a means of air pollution control,
9 are cyclonic separation systems. The testimony was, and we so find,
10 that of the systems described at the hearing, the cyclonic system was
11 the simplest to install, operate, and maintain.

12 III.

13 The only "defects" in appellant's Notice of Construction and
14 Application for Approval for its proposed planing mill revisions, alleged
15 by respondent in this appeal, are that appellant's proposed air
16 contamination control equipment

17 "does not evidence advances in the art of control of the
18 particulate matter generated by the air contaminant
19 source nor provide all known and available reasonable
20 means of emission control."

20 IV.

21 Neither the Federal Clean Air Act, nor RCW 70.94, nor WAC 18-04,
22 nor any of respondent's Regulations provide a definition of "all known
23 available and reasonable methods of emission control" as that phrase is
24 used in RCW 70.94.152, or a definition of "advances in the art of air
25 pollution control developed for the kind and amount of air contaminant
26 emitted by the equipment" as that language is used in Article III of

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1 respondent's Regulation 1.

2 V.

3 The parties have stipulated that neither respondent's Regulations 1
4 and 2, nor RCW 70.94 as amended, nor WAC 18-04 require that, in areas
5 where the ambient air quality standard for particulate matter is
6 currently exceeded or forecast to be violated, the best available air
7 pollution control technology shall be required before a new source of
8 particulate matter of the kind specified in the Application for Approval
9 will be permitted to be constructed, installed or established.

10 VI.

11 The requirement in § 3.03(b)(2) of Article III of respondent's
12 Regulation 1 requiring evidence of "advances in the art of air pollution
13 control" can be satisfied in some, but not all, cases by equipment which
14 limits air contaminant emissions to no more than those levels required to
15 satisfy § 5.02 of Article V of respondent's Regulation 2 (re emission
16 standards for particulate matter).

17 VII.

18 Respondent prepared no environmental impact statement in connection
19 with its consideration of appellant's Application for Approval because
20 it concluded that no "major action," as those words are used in
21 RCW 43.21C.030, was involved.

22 VIII.

23 At the time respondent issued its Order for Prevention, it
24 had concluded that the equipment specified in appellant's Application
25 for Approval, if approved, would not emit particulate matter which
26 would create a health problem for people, animals, or plants in Longvie

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1 or adjacent areas. Respondent had concluded that the small particles
2 emitted by the proposed facilities could, in conjunction with other
3 emissions in the area, aid in the contravention of the federal primary
4 ambient particulate matter air standard developed to protect human
5 health, or aid in the contravention of the state and federal ambient
6 particulate matter air standards designed to prevent injury to plant and
7 animal life.

8 IX.

9 Prior to or at the time respondent issued its Order for Prevention,
10 it had considered, but it had not determined, whether the operation of the
11 proposed equipment at the location proposed would cause any ambient air
12 quality standard for suspended particulate matter to be exceeded.

3 X.

14 Cyclones, baghouses (filtration systems), wet scrubbers,
15 and electrostatic precipitators, have been known and available for
16 control of industrial point source particulate matter emissions for at
17 least the last thirty (30) years.

18 XI.

19 Neither Longview, Washington nor any portion of it has been designated
20 a "sensitive area" as that term is used in WAC 18-04-090.

21 XII.

22 The placement of the fan (or blower) used in a particulate matter
23 cyclonic collection system of the type described in the Application for
24 Approval, downstream of the cyclonic collector, should decrease, in some
25 small amount, the particulate matter escaping to the atmosphere from such
6 a system, as compared to a similar system with the fan (or blower) up-

stream of the collector, when both systems are used to collect particulate matter of the kind and amount likely to be generated by the planers and trimmers described in said Application for Approval.

XIII.

The location of the fan downstream from the cyclonic collector in the equipment specified in the Application for Approval should reduce the formation of small-size particles in said equipment during its operation, in comparison to a similar system operated with the fan upstream of the collector.

XIV.

If appellant had proposed in its Application for Approval to use a properly designed filtration system having an air-to-cloth ratio of about 7 to 1, or one having an air-to-cloth ratio of up to 14 to 1 if a precleaner of medium efficiency was also used, to control particulate matter emissions from the planer and trimmer equipment specified therein, respondent would have concluded that the proposed "equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the equipment" in accordance with § 3.03(b)(2) of Article II of respondent's regulations, and further that such equipment represented "all known available and reasonable methods of emission control" as that language is used in RCW 70.94.152.

XV.

If appellant had proposed in its Application for Approval to use a properly designed wet scrubber having a pressure drop of about 15 inches of water, to control particulate matter emissions from the

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1 planer and trimmer equipment specified therein, respondent would have
2 concluded that the proposed "equipment incorporates advances in the art
3 of air pollution control developed for the kind and amount of air
4 contaminant¹ emitted by the equipment" in accordance with § 3.03(b)(2) of
5 Article III of respondent's regulations, and further that the proposed
6 equipment incorporated "all known available and reasonable methods of
7 emission control," as that language is used in RCW 70.94.152.

8 XVI.

9 Respondent's Board of Directors found, after hearing testimony
10 and reviewing evidence at a public hearing on October 23, 1974 in
11 connection with SWAPCA 74-47, that the particulate loading in the
12 ambient air of Longview will be significantly reduced due to control
13 programs associated with Weyerhaeuser and other industries in the area.

14 XVII.

15 The equipment described in appellant's Application for Approval has
16 been "designed and will be installed to operate without causing a
17 violation of the emission standards," as that language is used in
18 § 3.03, Article III of respondent's Regulation 1.

19 XVIII.

20 Neither the Order for Prevention nor the Administrative Order
21 stated that the construction, installation or establishment of the
22 equipment described in the Application for Approval would "not meet
23 the emission standards," as that phrase is used in § 3.03(c) of Article
24 III of respondent's Regulation 1.

25 XIX.

6 Neither the Order for Prevention nor the Administrative Order "set
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1 forth the objections (to the equipment outlined in the Application for
2 Approval) in detail with references to the emission standards that will
3 not be met by the proposed construction, installation or establishment,"
4 as those terms are used in § 3.03(c)(2) of Article III of respondent's
5 Regulation 1.

6 XX.

7 Prior to September 25, 1974, respondent had taken no action in
8 accordance with § 4.01 of Article IV of its Regulation 2 to change its
9 particulate emission standards in response to knowledge it had obtained
10 that any suspended particulate concentration in the ambient air in the
11 Longview area had exceeded the levels permitted by its own regulations.

12 XXI.

13 Since the adoption of respondent's Regulation 1 in December, 1968
14 and Regulation 2 in October, 1969, respondent has not issued any public
15 notices nor held any public hearings of the kinds specified in
16 RCW 70.94.141(1), in connection with any attempts by it to amend any
17 particulate matter emission standard set out in said regulations.

18 XXII.

19 Respondent's Article II, Regulation 1, § 2.06, entitled
20 "Advisory Council," provides as follows:

21 "The duties of the Advisory Council shall be to
22 advise the Board of the proper type of general
23 regulations and standards for adoption within the
24 jurisdiction of the Authority.

25 "All recommendations for the adoption or modification
26 of regulations of general import or emission standards
27 shall be submitted to the Advisory Council sufficiently
in advance of any Board action on the recommendations in
order that the Advisory Council might advise and consult
with the Board on the recommendations."

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1 and further, that respondent has formed such a Council, but it has not
2 met since prior to October 18, 1969.

3 XXIII.

4 Properly designed wet scrubber or electrostatic precipitation
5 systems for controlling particulate emissions from the planing and
6 and trimming equipment described in appellant's Application for Approval,
7 would have capital and operating costs equal to or in excess of those
8 for a properly designed filtration system in the same service.

9 XXIV.

10 Ambient air quality standards for suspended particulates have been
11 occasionally exceeded in the Longview area. It is expected that there
12 will be a reduction of suspended particulates in the future as existing
13 emission sources meet applicable standards. The addition of a new
14 emission source would contribute to exceeding the standards at this time.

15 XXV.

16 Respondent SWAPCA's Regulation 1 is as found in Exhibit N-1.
17 SWAPCA's Regulation 2 is as found in Exhibit N-2. Insofar as portions of
18 the aforesaid Regulations not already mentioned in these Findings are
19 relevant, they will be referred to in the Conclusions of Law.

20 XXVI.

21 The control equipment described in the plans submitted by appellant
22 to the respondent will ordinarily produce particulate matter emissions of
23 less than 0.05 grains per standard cubic foot (gr/scf) of exhaust gas,
24 well within the 0.1 gr/scf requirement set forth in chapter 18-04 WAC
25 and in § 5.02, respondent's Regulation 2.

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XXVII.

From the information provided by the appellant on the face of its application, and the testimony adduced at the hearing, we find that an average of about 0.0025 gr/scf, or about 2.4 pounds per hour, of 20 micron (um) or smaller particulates, and about 0.0195 gr/scf, or about 19.1 pounds per hour, of 20 um or larger particulates, would probably escape the proposed cyclonic system (three units) into the atmosphere. We also find that a maximum of approximately 0.013 gr/scf, or 13 pounds per hour, of 20 um or smaller particulates, plus approximately 0.095 gr/scf, or 93 pounds per hour, of 20 um or larger particulates, for a maximum total discharge of 0.108 gr/scf, or 106 pounds per hour, would escape the proposed cyclonic system and be discharged into the atmosphere.

Essentially all of the escaped particulate will eventually fall to the ground, though the larger particles will fall more rapidly than the smaller ones.

There would be little difference in the total amount of particulates emitted between appellant's existing system and its proposed system.

XXVIII.

In comparison with the foregoing, using a properly operating bag-house, a total of approximately 0.00024 gr/scf, or 0.23 pounds per hour of particulates would escape into the atmosphere. This amount would be a significant decrease in the particulate emissions from this plant as it now exists.

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1 XXIX.

2 The respondent has uniformly required all persons within its
3 jurisdiction to evidence certain "advances in the art" in their proposed
4 pollution control equipment. Respondent's enforcement of its Regulations,
5 has caused other wood processors to select baghouses to satisfactorily
6 evidence advances in the state of the art.

7 XXX.

8 Appellant's proposed pollution control equipment, for each planer
9 and trimmer line, consisting of a long cone cyclone containing a shear
10 blade and air lock, and a radial bladed pull-through fan system with
11 slide gate adjustment, does not evidence any substantial improvements in
12 design, theory, or performance as compared to common cyclonic collection
3 equipment such as that which it is proposed to replace. However, cyclone
14 systems evidence certain preferable safety, energy, or operational
15 features as compared to wet scrubbing and filtration collection systems.

16 XXXI.

17 The additional capital cost required for the installation of a
18 baghouse collection system, rather than a cyclonic collection system, is
19 \$180,000. In addition, the annual operating costs would be \$16,000 more
20 using the former system. (See also Finding XXIII, supra.) Appellant
21 has produced no evidence relating to increases in the unit of production
22 cost, or similar measure, that would result from the use of the various
23 types of systems.

24 XXXII.

25 Any Conclusion of Law which should be deemed a Finding of Fact is
.6 hereby adopted as such.

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1 From these Findings the Pollution Control Hearings Board makes these

2 CONCLUSIONS OF LAW

3 I.

4 The Board has jurisdiction over the persons and over the subject
5 matter of this proceeding.

6 II.

7 RCW 70.94.152 provides that the respondent make three determinations
8 before approving the construction, installation, or establishment of a
9 "new" air contaminant source: whether the project will (1) meet all
10 applicable rules and regulations in force pursuant to chapter 70.94 RCW;
11 (2) provide all known available and reasonable methods of emission
12 control; and (3) cause any ambient air quality standard to be exceeded.

13 The first part of the statutory requirement has been met. The thi
14 part of the test has not as yet been determined by respondent. The
15 issue here is whether the second part, and respondent's regulations, have
16 been met.

17 III.

18 The statutory and regulatory requirements at issue found in
19 RCW 79.94.152 (all known available and reasonable methods) and § 3.03(b) (2
20 of respondent's Regulation 1 (requiring advances in the art) are
21 equivalent under the facts of this case. In interpreting said require-
22 ments, each should be read in light of its respective policy sections,
23 RCW 70.94.011 and § 1.01, Regulation 1 (and 2). With this guidance, the
24 keys to the interpretation of the applicable laws are the practicality
25 and reasonableness of the requirements imposed. For a new emission
26 source, this would draw in the issues of technological and economic

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1 feasibility.

2 The evidence does not show that respondent's interpretation of
3 the requirements will subject the appellant to an unreasonable,
4 unfeasible, or impractical burden. Although the appellant has
5 introduced evidence concerning the costs of baghouses and cyclones, it
6 has not shown how the difference in cost between the two systems would
7 be an impractical or unreasonable burden. In meeting its burden of
8 proof, appellant should show more than just absolute costs. These
9 amounts should be referenced to one or more meaningful measures which
10 clearly show an unjustifiable economic burden upon a specific part of
11 the industry.

12 IV. '

13 "All known and available reasonable methods of emission control"
14 and "advances in the art of air pollution control developed for the kind
15 and amount of air contaminant emitted by the equipment" are guides
16 defining and confining the exercise of administrative discretion. They
17 are acceptable standards, so long as the reasons for an action, and not
18 mere conclusions, are stated in detail. See K. C. DAVIS, ADMINISTRATIVE
19 LAW (ch. 4; § 6.05 (3d ed. 1972)). This Board reviews de novo the basis
20 for the final decision made by the local authority.

21 In this instance, the orders issued by SWAPCA omit factual reasons
22 for the decision. However, evidence was taken concerning these factual
23 reasons at the hearing and it would serve no useful purpose to remand
24 this matter for compliance. Although no prejudice occurred or is
25 claimed in this regard, the respondent must employ some means to properly
6 guide the use of its discretionary standard in § 3.03(b)(2).

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1 V.

2 Respondent's Regulations 2, § 5.02, and 1, § 4.02, respectively,
3 regulate point discharge concentrations on a weight per unit of
4 volume basis, and on an opacity or light transmission basis, rather
5 than on a particle-size basis. Considering (1) the current identifiable
6 problems in maintaining the existing ambient air standards with regard
7 to particulate matter, (2) § 3.03(b)(2) of Regulation 1, requiring
8 advances in the art of air pollution control for the kind and amount of
9 emissions, and (3) the fact that particulates have some physical weight,
10 we conclude that particle size can be regulated indirectly as is done
11 here.

12 VI.

13 The orders issued by respondent sufficiently apprise the appellant
14 of the only "defect" in appellant's Notice of Construction and
15 Application for Approval. All numerical emission standards were met.
16 Therefore, § 3.03(c) of respondent's Regulation 1 was fully met.

17 VII.

18 In view of the record of this case, including the exceptions and
19 replies thereto, it is clear that appellant seeks to hold on to an
20 emission rate which reflects the status quo. In doing so, appellant
21 ignores a concern of the Clean Air Act, i.e., that the statutes and
22 regulations mean to prod the utilization of improved technology.
23 Respondent's regulations indicate this concern by requiring "advances in
24 the art" in air pollution control equipment for new sources. Appellant,
25 on the other hand, seeks a ruling by this Board which would inhibit
26 innovation by permitting emissions by new pollutant sources at levels

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1 established in the late sixties. To do so, however, would run counter
2 to RCW 70.94.011, § 1.01 of respondent's Regulations 1 and 2,
3 WAC 18-40-010, and the above concern of the Clean Air Act.

4 It should be remembered that air is a public resource belonging to
5 the people. In former times, a polluter used this resource for free.
6 Now, a polluter must pay its way, up to and including seeking a solution
7 for a problem it has created.

8 VIII.

9 The State Environmental Policy Act (SEPA), chapter 43.21C RCW, is
10 supplementary to the statutory and regulatory scheme of the Clean Air
11 Act. RCW 43.21C.060. SEPA does not replace respondent's specific
12 statutory and regulatory obligations.

13 IX.

14 By using a baghouse or wet scrubber as examples, respondent has
15 not thereby required appellant to use a particular type or a particular
16 brand of equipment as would contravene RCW 70.94.152(3). Appellant can
17 investigate and use other satisfactory methods if it so desires.

18 X.

19 Respondent has properly promulgated its regulations.

20 XI.

21 The testimony at the hearing indicates that appellant's application
22 may overstate the actual amounts of particulate emissions. If this is
23 true, appellant may wish to resubmit its application to more accurately
24 reflect the correct amounts of emissions.

25 XII.

6 Any Finding of Fact which should be deemed a Conclusion of Law

1 is hereby adopted as such.

2 From these Conclusions the Pollution Control Hearings Board
3 enters this

4 ORDER

5 The respondent's Order denying the approval of the proposed
6 construction is affirmed.

7 DONE at Lacey, Washington this 27th day of August, 1975.

8 POLLUTION CONTROL HEARINGS BOARD

9 Chris Smith
10 CHRIS SMITH, Chairman

11 W. A. Gissberg
12 W. A. GISSBERG, Member

13 Walt Woodward
14 WALT WOODWARD, Member

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